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OFFICE OF PETITIONS

In re Application of :
Walter Brandenburger :
Application No. 10/081,517 :
Filed: February 21, 2002 :
Attorney Docket No. 22750/527 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed November 4, 2005, to withdraw the holding of abandonment.

The application became abandoned on March 30, 2005, for failure to reply pay the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on December 29, 2004, which set a three-month statutory period for reply. A Notice of Abandonment was mailed on October 13, 2005.

In the present petition, the petitioner asserted that practitioner did not receive the Notice of Allowance of December 29, 2004.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (*e.g.* if the practitioner has a history of not receiving Office actions).

In the present petition, the practitioner, Richard Rosati, stated that he enclosed a copy of the docket records for mail received from December 27, 2004 to January 21, 2005, which he alleged showed that he did not receive any mail relating to the above-identified application from the United States Patent and Trademark Office during that period. Mr. Rosati asserted that if he had received the Notice of Allowance of December 29, 2004, it would have been indicated on the docket records for mail received. Additionally, Mr. Rosati submitted a copy of the file jacket for the above-referenced application. Mr. Rosati explained that the file jacket did not include an entry for the Notice of Allowance, which would have been entered if it was received in his office and the appropriate due date for the payment of issue fee would have been indicated on the same file jacket. Additionally, Mr. Rosati indicated that the docket reports would have been sent to the applicant indicating a due date for the issue fee.

Upon a review of the statement of Mr. Rosati and the documents submitted with the petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. Accordingly, the petition to withdraw the holding of abandonment is granted.

This matter is being referred to the Office of Patent Publications.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.



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